



MIKE PENCE, *Governor*  
JAMAL L. SMITH, *Executive Director*

ICRC No.: EMha13101577

[REDACTED]  
Complainant,

v.

MAIN STREET DINER,  
Respondent.

### NOTICE OF FINDING

The Deputy Director of the Indiana Civil Rights Commission ("Commission"), pursuant to statutory authority and procedural regulations, hereby issues the following findings with respect to the above-referenced case. Probable cause exists to believe that an unlawful discriminatory practice occurred in this instance. 910 IAC 1-3-2(b).

On October 30, 2013, [REDACTED] ("Complainant") filed a Complaint with the Commission against Main Street Diner ("Respondent") alleging discrimination on the basis of perceived disability in violation of the Indiana Civil Rights Law (Ind. Code § 22-9, *et seq.*) and [REDACTED]. Accordingly, the Commission has jurisdiction over the parties and the subject matter of this Complaint.

An investigation has been completed. Both parties have been given the opportunity to submit evidence. Based upon a full review of the relevant files and records and the final investigative report, the Deputy Director now finds the following:

The issue presented to the Commission is whether Complainant was terminated because of a perceived disability. In order to prevail, Complainant must show that: (1) she has or was perceived to have an impairment that substantially limits one or more major life activities; (2) she suffered an adverse employment action; (3) she was meeting Respondent's legitimate business expectations; and (4) similarly-situated employees without perceived impairment were treated more favorably under similar circumstances.

It is evident that Complainant was perceived as having an impairment that constitutes a disability as the term is defined under the applicable laws. Moreover, there is no question that she suffered an adverse employment action when Respondent terminated her employment on or about October 17, 2013. Further, Respondent admits that Complainant was meeting its legitimate business expectations at the time of the termination and that similarly-situated



employees without perceived impairment were treated more favorably under similar circumstances.

By way of background, Respondent's owner hired Complainant as a cook approximately one week before her termination in October 2013. Respondent's owner admits that once rumors began to spread about Complainant having a serious medical condition, she immediately terminated Complainant's employment because the rumors "would destroy [the owner] and [the owner's] business." Further, the owner admitted that it "had a good customer base...and a good reputation and...was not going to lose that." Although Complainant contends she does not have the serious medical condition at issue, Respondent's owner clearly perceived Complainant to be disabled and terminated her employment accordingly. To the extent Respondent's owner asserts Complainant does indeed suffer from the impairment, there is no evidence to show that she attempted to verify the truth of the rumors, attempted to enter into an interactive dialogue regarding the ramifications of the impairment on Complainant's employment, or made an attempt to maintain Complainant's employment with Respondent. Rather, the evidence is clear that a nexus exists between Complainant's alleged disability and the termination of her employment. Further, Respondent admitted that it had no issue with Complainant until the rumors began spreading about Complainant's perceived impairment, showing that it treated individuals without perceived impairment more favorably under similar circumstances. Thus, Respondent's actions amount to pretext for unlawful discrimination and there is probable cause to believe that an unlawful discriminatory practice occurred as alleged.

A public hearing is necessary to determine whether a violation of the Indiana Civil Rights Law occurred as alleged herein. Ind. Code §22-9-1-18, 910 IAC 1-3-5. The parties may agree to have these claims heard in the circuit or superior court in the county in which the alleged discriminatory act occurred. However, both parties must agree to such an election and notify the Commission within twenty (20) days of receipt of this Notice, or the Commission's Administrative Law Judge will hear this matter. Ind. Code § 22-9-1-16, 910 IAC 1-3-6.

March 10, 2014

Date

Akia A. Haynes

Akia A. Haynes, Esq.

Deputy Director

Indiana Civil Rights Commission